

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EVERETT BURNETT,

Plaintiff,

v.

Case Number 08-11764
Honorable David M. Lawson

MICHIGAN DEPARTMENT OF CORRECTIONS,
PATRICIA CARUSO, Director of MDOC,
SUSAN DAVIS, Warden, ROY RYDER,
Deputy Warden, JOSHUA ZUSSMAN, Officer,
DONACIANO MARTINEZ, Officer, LYNN
SIDUN, Officer, and STEVEN TROSZAK, Officer,

Defendants.

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**ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION, GRANTING MICHIGAN DEPARTMENT OF
CORRECTIONS AND PATRICIA CARUSO'S MOTION TO DISMISS,
AND ALLOWING THE PLAINTIFF TO FILE A SECOND AMENDED
COMPLAINT TO RESTATE ALLEGATIONS AS TO DEFENDANT CARUSO**

Presently before the Court is the report issued on August 13, 2009 by Magistrate Judge Mark A. Randon pursuant to 28 U.S.C. § 636(b), recommending that this Court grant defendants Michigan Department of Corrections and Patricia Caruso's motion to dismiss and grant the plaintiff leave to file a second amended complaint to restate allegations against defendant Caruso only. Although the magistrate judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within ten days of service of the report, no objections have been filed. The parties' failure to file objections to the Report and Recommendation waives any further right to appeal. *Smith v. Detroit Federation of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to

independently review the matter. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). However, the Court agrees with the findings and conclusions of the magistrate judge.

Accordingly, it is **ORDERED** that the Magistrate Judge's Report and Recommendation [dkt # 42] is **ADOPTED**.

It is further **ORDERED** that defendants Michigan Department of Corrections and Patricia Caruso's motion to dismiss [dkt. # 28] is **GRANTED**.

It is further **ORDERED** that the plaintiff is granted leave to file a second amended complaint to restate his allegations with respect to defendant Patricia Caruso only.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: September 2, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on September 2, 2009.

s/Lisa M. Ware
LISA M. WARE